prescribed for dismissal under Part II of the 1969 Regulations should have been followed. The so-called termination was in fact a dismissal." Regulation 27 is specific when it said: —

"In all disciplinary *proceedings under this Part* no officer shall be *dismissed* or *reduced in rank* unless he has been informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard." (Italics supplied).

The action pursuant to Regulation 44 is not within the ambit of Regulation 27.

I am in agreement with my brethren that Article 132(2A) preserves the doctrine of pleasure. "There seems no vested right in remaining in government service up to a certain age," as the judge himself remarked but which is what the plaintiff claimed he was entitled to. Unlike judges who "hold office until he attains the age of sixty-five years" and who "shall not be *removed* from office" except in accordance with the provisions of Article 125, a member of the public service under the pleasure doctrine occupies a different position. As long ago as 1927, in *S. K. Pillai* v. *State of Kedah*[4] it was said: —

"Now a public servant on accepting an appointment under the British Crown is in general appointed for no defined period. The Crown does not bind itself either to retain his services or to grant him increased pay or promotion. But it is the custom to bring to his notice that he may expect, if he remains in service ... ultimately on retirement *(at an age that is not infrequently specified)* a pension, ... such an arrangement ... confers no rights on the servant."

and in *Terrell* v. *The Secretary of State for the Colonies and Another*,[22] Lord Goddard L.C.J. said: —

"In my opinion it is clear that judges in the Straits Settlements, or Malaya ... hold and always have held their office at the pleasure of the Crown....

In strictness the claimant was appointed by Letters Patent ... and I regard the correspondence merely as telling him of the age of compulsory retirement and of the pension at whatever age he retired that he might expect. I say 'expect' because under the Pensions Ordinance there is no absolute right to a pension.

Were I to accede to the argument that these letters amount to a contract, I should be holding, in effect, that every person entering the service of the Crown who is told before he enters that his retiring age will be so and so could say that he had a contractual right to remain in the service till that age, and this would in effect override all the cases which have decided that a servant of the Crown holds office at pleasure."

I agree that this appeal be allowed with costs here and in the court below.

Appeal allowed.

Solicitors: *Lim Kean Chye & Co.*

TAY EK SENG COMPANY SDN. BHD. & ORS. v. TAY CHO KOH & ORS.

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Ali F.J.) May 9, 1975]

[Kuala Lumpur — Federal Court Civil Appeal No. 45 of 1974]

Practice and Procedure — Order — Variation of Order.

The respondent had obtained an order under section 143(4)(b) of the Companies Act, 1965 directing the Chairman (2nd appellant) to call the 13th Annual General Meeting and the directors to call the 14th and 15th meetings within a prescribed period. When the respondents could not serve the order on the appellants they applied by motion for variation of the order to provide for the meetings to be called by the company. The learned judge allowed the application. The appellants appealed to the Federal Court.

Held, dismissing the appeal: in this case the order had not been substantially altered so as to make it an entirely new order. If it had not been varied the whole purpose of the order would have been defeated.

Cases referred to:-

(1) *Re Suffield and Watts, ex parte Brown* (1888) 20 Q.B.D. 693.

(2) *Preston Banking Company* v. *William Allsup & Sons* [1895] 1 Ch. 141.

FEDERAL COURT.

A. L. Taye for the appellants.

Thara Singh for the respondents.

Ali F.J.: This is a dispute between the two directors (second and third appellants) of a private company (the first appellant) and seven of its members, one of whom (fourth respondent) is also a director.

By Originating Summons No. 68 of 1973 the respondents applied for an order under section 143(4)(b) of the Companies Act, 1965 to call the 13th, 14th and 15th Annual General Meetings of the company. The 13th Meeting was held in February, 1971 but was adjourned to enable a committee of inspection to examine the annual accounts.

The respondents have come to the court to get an order to call the adjourned meeting as well as the subsequent annual general meetings which should have been called but were not called. The late Pawan Ahmad J. made an order in terms of the Originating Summons directing the chairman (second appellant) to call the 13th Annual General Meeting and the directors to call the 14th and 15th meetings within a prescribed period. This was on October 8, 1972. When the parties could not agree on the terms of the draft order the respondents on November 27, 1972 filed a Motion to vary the order. The nature of the variation sought was to have the meetings called by the company (first appellant) and not by the directors or chairman as originally ordered. The reason for the Motion was because the respondents had anticipated that the order as it originally stood could not be carried out in the event it could not be served on either the chairman and/or other directors. The judge at first granted the Motion but subsequently recalled the order and reversed his decision by dismissing the Motion. The October 8 order thus remained unvaried. When the respondents could not serve it on the second and third appellants they brought another Notice of Motion to vary the order. In the meantime the three meetings had not been called as directed. Obviously something must be done to the original order to en-

able them to be called. Alternatively, the respondents would have to apply for a fresh order in which case the appellants might be moved to raise the plea of *res judicata* which in fact was raised in the course of the arguments. In all the circumstances of this case I cannot see any reason why the second Motion should not have been granted by the court. The variation sought by the respondents did not affect or alter the operative or substantive part of the order. The order in its varied form still directs the three meetings to be called.

The instant appeal which is against the granting of the second Notice of Motion by the respondents must be considered in the light of what happened arising from the October 8 order. In Civil Appeal No. 131 of 1974 the appellants appealed against the order to the Federal Court. Pending the hearing of the appeal they unsuccessfully applied to the High Court for a stay of execution. Their further application to the Federal Court for a stay under section 73 of the Courts of Judicature Act, 1964 was dismissed. In a judgment dated June 6, 1974 delivered by me and agreed to by the rest of the court I referred to the variation made by the learned judge in these words:

"The effect of the variation made by the court below was merely to ensure that the meeting or meetings be called as directed. The complaint against the variation is without substance."

Had the instant appeal been listed before the Federal Court at its sitting in Johor Baru I have no doubt that it would have been dismissed for the same reason. I now come to the appeal against the order of October 8 as varied by the late judge. The arguments in the appeal turned mainly on the question whether the learned judge had properly exercised his discretion under section 143(4)(b) of the Companies Act, 1965. Holding that he had the Federal Court dismissed the appeal. As far as I am aware the appellants have not taken the matter any further. We were informed at the hearing that the three meetings have already been held. So whatever points that can arise for our consideration are only of academic importance.

It is, I think, settled law that when an order of the High Court has once been perfected the court has no jurisdiction to alter it. See re *Suffield and Watts, ex Parte Brown*[1] and also *Preston Banking Company* v. *William Allsup & Sons*.[2] In the instant case the order has not been substantially altered as to make it an entirely new order. If it had not been so varied the whole purpose of the order would have been defeated. On the facts as well as on the law I have no doubt that the second Motion was rightly granted.

This appeal is dismissed with costs to be paid by the second and third appellants personally.

Suffian L.P. and **Lee Hun Hoe C.J. (Borneo)** concurred.

Appeal dismissed.

Solicitors: *Mah-Kok & Taye; Sault & Co.*

MAK SIK KWONG v. MINISTER OF HOME AFFAIRS, MALAYSIA

[O.C.J. (Abdoolcader J.) May 27, 1975]
[Ipoh — Originating Motion No. 34 of 1973]

Administrative law — Certiorari — Application to quash order of deprivation of citizenship — Whether ouster clause in Federal Constitution precludes application for a prerogative order — Whether respondent in making order of deprivation of citizenship performing a purely administrative or ministerial act — Whether order amenable to order of certiorari — Federal Constitution, arts. 24(2) & 27 & 2nd Sch. Pt. III s. 2.

Constitutional Law — Citizenship — Deprivation of — Certiorari — Federal Constitution, arts. 24(2) & 27 & 2nd Sch. Pt. III s. 2.

In this case the applicant had applied by motion for an order of *certiorari* to remove into the court and quash the respondent's order of deprivation of his citizenship. The respondent subsequently brought an application by way of summons in chambers to set aside the motion. It was submitted for the respondent (a) that the provisions in the Schedule to the Federal Constitution that the decision of the Federal Government thereunder shall not be subject to appeal or review in any court, precluded an application for a prerogative order or indeed any form of judicial proceeding; (2) that the respondent in making an order of deprivation of citizenship was performing only an administrative or ministerial act and that therefore his order is not amenable to *certiorari*.

Held: (1) the ouster provision in the Schedule to the Federal Constitution did not preclude the court from entertaining the application for an order of *certiorari*. Whether grounds for an order can be established and whether the application for *certiorari* will succeed, are matters which can be decided at the hearing of the substantive motion itself;

(2) the respondent in this case was in fact acting at the very least at one stage in the process in a quasi-judicial capacity in making an order of deprivation of citizenship and not performing a purely ministerial or administrative act. In any event, the respondent was under the constitutional provision determining the rights of individuals and was also under a duty to act fairly. Orders therefore made by the respondent under Article 24(2) of the Constitution are amenable to the prerogative order of *certiorari*;

(3) the application for *certiorari* is therefore not precluded in this case but whether it can avail the applicant will have to be determined on the grounds and merits of the application.

Cases referred to:-

(1) *Soon Kok Leong* v. *Minister of Interior, Malaysia* [1968] 2 M.L.J. 88.
(2) *In re Soon Chi Hiang* [1969] 1 M.L.J. 218.
(3) *Reg.* v. *Medical Appeal Tribunal, ex parte Gilmore* [1957] 1 Q.B. 574.
(4) *Tehrani & Anor.* v. *Rostron* [1972] 1 Q.B. 182, 187-8.
(5) *Liew Shim Lai* v. *Minister of Home Affairs* [1970] 2 M.L.J. 7.
(6) *Kannan & Anor.* v. *Menteri Buroh dan Tenaga Rakyat & Ors.* [1974] 1 M.L.J. 90.
(7) *Sungei Wangi Estate* v. *Uni s/o Narayan Nambiar* [1975] 1 M.L.J. 136.
(8) *The Colonial Bank of Australasia & Anor.* v. *Willan* (1874) L.R. 5 P.C. 417, 442.
(9) *Secretary of State* v. *Mask & Company* (1940) L.R. 67 I.A. 222, 236.
(10) *Board of Governors of the London Hospital* v. *Jacobs* [1956] 1 W.L.R. 662, 669, 676
(11) *Anisminic Ltd.* v. *Foreign Compensation Commission* [1969] 2 A.C. 147, 195, 197, 207.
(12) *Rediffusion (Hongkong) Ltd.* v. *Attorney-General of Hongkong & Anor.* [1970] A.C. 1136.
(13) *Re Chua Ho Ann* [1963] M.L.J. 193, 195.
(14) *R.* v. *Dublin Corporation* (1878) L.R. 2 Ir. 371, 376.
(15) *Ridge* v. *Baldwin* [1964] A.C. 40, 74-76.
(16) *Durayappah* v. *Fernando* [1967] 2 A.C. 337.
(17) *Rex* v. *Woodhouse* [1906] 2 K.B. 501, 535.
(18) *Reg.* v. *Liverpool Corporation, ex parte Liverpool Taxi Fleet Operators' Association* [1972] 2 Q.B. 299.